

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILED

JAN 16 2004 JS

MICHAEL M. MILBY, CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MARK NEWBY, *et al.*

Plaintiffs,

v.

ENRON CORP., an Oregon corporation,  
*et al.*,

Defendants.

CIVIL ACTION NO. H 01-3624  
AND CONSOLIDATED CASES

PAMELA M. TITTLE, on behalf of herself  
and a class of persons similarly situated, *et al.*,

Plaintiffs,

v.

ENRON CORP., an Oregon corporation,  
*et al.*,

Defendants.

CIVIL ACTION NO. H 01-3913  
AND CONSOLIDATED CASES

**DEFENDANT KEN L. HARRISON'S  
REQUEST FOR ADDITION OF ITEMS TO HEARING AGENDA**

In response to your invitation to identify matters appropriate for consideration at the hearing scheduled for January 22, 2004, Defendant Ken L. Harrison requests that the following items be added to the hearing agenda.

1. Discovery dates applicable to non-parties. A number of non-parties who have been served with subpoenas in the *Newby* matter have objected and refused to produce

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based on their contention that document discovery closed in the consolidated cases on or about October 1, 2003, pursuant to paragraph II.C.1. of the Court's July 11, 2003 Scheduling Order. Attorneys for Defendant Harrison have communicated to many of these parties their understanding of the Court's July 11, 2003, Scheduling Order—which is that October 1, 2003, was the date set for substantial completion of document production in response to Lead Plaintiff's initial round of discovery requests to parties, which had been stayed by PSLRA during the pendency of motions to dismiss, and not the date for the close of all document discovery in the case. This interpretation is consistent with the fact that October 1, 2003, was only a few months after the PSLRA stay was lifted and more than a year before fact discovery in general was set to close on December 17, 2004 (*Id.* ¶ II.C.4.). Nevertheless, counsel for many of the non-parties served with subpoenas have stated that they will not produce documents unless and until the Court issues an order clarifying or amending the July 11, 2003 Scheduling Order. Defendant Harrison respectfully requests that the Court resolve this issue at the January 22 hearing.

2. PSLRA stay. Pending before the court is a Motion to Compel Deutsche Bank Entities to Respond to Requests for Production filed by certain officer defendants. The Deutsche Bank entities have asserted that the PSLRA stay is still in effect as to them because this Court initially dismissed them from the case before Lead Plaintiff named them again as defendants in the First Amended *Newby* Complaint. The merits of that contention have been briefed by the officers and the Deutsche Bank entities and may be appropriate to address at the January 22 hearing. Defendant Harrison is not a party to that motion, but calls the Court's attention to the fact that a non-party affiliate of the Deutsche Bank entities, an LJM2 partner named BT Investment Partners, Inc. ("BT"), has asserted the same PSLRA stay in response to a subpoena served by Defendant Harrison in the *Newby* action. BT contends that the subpoena is an attempted end-run around the supposed PSLRA stay of discovery against those Deutsche Bank entities that are parties. That is not the case. BT would be a subpoena target whether or

not any other Deutsche Bank entities had ever been defendants in the *Newby* action. BT was a limited partner of an entity (LJM2) that is alleged to have played an essential role in many of the transactions challenged by Lead Plaintiff. Accordingly, Defendant Harrison asks the Court to address at the January 22 hearing the extent to which any PSLRA stay may benefit any Deutsche Bank entity.

3. Discovery Master. Defendant Harrison asks the Court to address the appointment of a discovery master in these cases. The issues raised above are two relatively small discovery issues among hundreds that will arise on a weekly basis and, once deposition discovery begins in earnest, likely on a *daily* basis. Even if the Court extends the discovery period significantly, the parties will be hard-pressed to maintain the necessary pace of discovery without quick and regular access to an arbiter of discovery disputes. Appointment of a discovery master would relieve some of the burden on this Court and give the parties the best opportunity to keep to a realistic discovery schedule. Defendant Harrison asks the Court to address this issue at the January 22 hearing.

4. Opportunity to be Heard Regarding Deposition Protocols. Defendant Harrison anticipates that other parties will present to the Court, at the January 22 hearing, proposed protocols and procedures for depositions in these and other consolidated and coordinated matters, as well as proposed amendments to the July 11, 2003 Scheduling Order. Certain parties who played a leadership role at Enron at or near the time of its demise are attempting to control the scope of discovery in the consolidated cases.<sup>1</sup> As a result, the proposed protocols under consideration at the time of this filing contain limitations on total deposition hours as well as deposition days per witness which, if adopted by the Court, will prevent Defendant Harrison from mounting an effective defense to the claims against him. These provisions would limit defendants like Harrison, who remain exposed to liability on all claims in

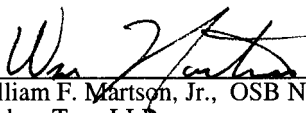
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<sup>1</sup> Counsel for Defendant Harrison sought to participate in negotiations regarding the protocols to be proposed to the Court but was expressly denied the opportunity to participate.

the *Newby* action, to a handful of deposition days. This would effectively cede Harrison's discovery and defense to other defendants who have substantial conflicting interests based on their different positions in the Enron hierarchy, as well as varying potential exposure to civil and, in some cases, criminal liability. Harrison fully supports the creation of a deposition protocol in these cases. However, such protocol must preserve the right of every defendant to adequately investigate and defend his or her case. Accordingly, Defendant Harrison asks the Court not to order any discovery protocols without first giving him an opportunity to oppose and be heard.

DATED: January 16, 2004

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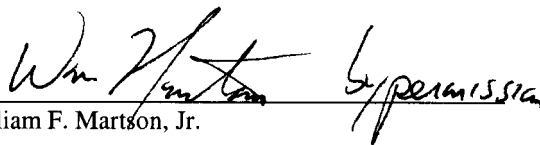
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DEFENDANT KEN L. HARRISON'S REQUEST FOR ADDITION OF ITEMS TO HEARING AGENDA** has been served by sending a copy via electronic mail to serve@ESL3624.com on this 16th day of January, 2004.

I further certify that a copy of the foregoing **DEFENDANT KEN L. HARRISON'S REQUEST FOR ADDITION OF ITEMS TO HEARING AGENDA** has been served via overnight mail on the following parties, who do not accept service by electronic mail, on this 16th day of January, 2004:

Carolyn S. Schwartz  
United States Trustee, Region 2  
33 Whitehall Street, 21st Floor  
New York, NY 10004

  
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William F. Martson, Jr.

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